LYMAN MINING CO.

IBLA 80-770 Decided April 21, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claims abandoned and void. AA-29238 through AA-29252.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

   The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Estoppel--Federal Employees and Officers: Authority to Bind Government

   Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements.

APPEARANCES: Elizabeth T. Lyman, Corvallis, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Lyman Mining Company appeals from the decision of June 6, 1980, wherein the Alaska State Office, Bureau of Land Management (BLM),

declared the 15 mining claims listed in the appendix, located before October 21, 1976, abandoned and void because the owner of the claims failed to file by October 22, 1979, an affidavit of assessment work or a notice of intention to hold the subject mining claims. On September 7, 1979, according to the BLM decision, information and notices (of location) for the 15 claims were filed with BLM, as required by section 314 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744 (1976). Appellant cannot refile, according to its statement of reasons, because the involved land has been selected for conveyance to a Native village corporation under the Alaska Native Claims Settlement Act of 1971, § 14(a) (P.L. 92-203), 85 Stat. 702, 43 U.S.C. § 1613 (1976).

In its lengthy statement of reasons on appeal, appellant states in part:

> When we filed our certificates of location for the Donlin Creek claims in September 1979, we appeared in person at the BLM State Office in Anchorage. After much buckpassing and seeming confusion in the office we finally accomplished the filing. We asked if that was all, and we were assured that it was. No one said one word to us about the assessment affidavit filing, or that if we did not meet the same deadline for filing it (October 22, 1979) we would lose our claims "conclusively" and we could never restake them again since we were in a native withdrawal area. Such bureaucratic incompetence is absolutely inexcusable, especially since the BLM office was not at all crowded that day, nor did it appear shorthanded in any way.
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> We knew that BLM required the filing of assessment work, and we believed, as we had in over 30 years of mining work, that assessment work was due at the end of the assessment year following the year of recording, that is, December 1980. We intended to file assessment work with BLM in 1980. Of course we kept up with our state filing, as we always have. * * *
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> The BLM decision against the Lymans does not simply rid the public land of stale claims -- a laudable objective with which we have no quarrel. Its very real effect is to destroy a valid, long-held, presently active set of mining claims, and with them the years of experience, effort, and special knoweldge [sic] which a family has acquired over decades of familiarity with mining in a particular remote area of Alaska. Such a decision impoverishes the nation's mineral wealth, for it extinguishes the very foundation of that wealth: mining knowledge and experience. All these effects are totally unintended by the law which contains the filing requirement, the Federal Land Policy and Management Act (FLPMA).

> The BLM's corruption of FLPMA is starkly illustrated by the fate of claims located near ours, BLM Ser. Nos. AA-031213 through AA-031230 (the Waterfield claims). These claims were located in 1968 on the south slope of Juninggulra Mountain, which is situated approximately 12 miles southwest of the Lyman's Donlin Creek claims, in range 21 north, township 50 west of the Seward Meridian (the township is in the Crooked Creek withdrawal area). * * *
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> The mining claim location certificate and affidavit of annual labor for the Waterfield claims were properly filed with BLM Alaska State Office, in Anchorage. * * * The certificate and the affidavit comply in all respects with the requirements set forth in both section 314 of FLPMA, and (2) section 3833.1 of the regulations (43 CFR). The Waterfield file contains no quarter section location, as required in section 3833.1-2(c)(5) of the regulations; however, the BLM treats this omission as a "curable defect." [Footnotes omitted.]

Appellant's arguments in essence are:

1. The decision of BLM is unjust and inequitable.

2. The difficulties of distance and transportation affecting the small miner in remote areas of Alaska justify not applying the BLM decision to appellant.

3. The claims, in fact, are not abandoned and BLM knew this. Appellant performed the required assessment work in 1979.

4. Where there is evidence of BLM confusion and irregularity, combined with the miner's strong good faith intent to comply, under E. Joe Swisher, 44 IBLA 44 (1979), the Board should vacate the BLM decision.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of annual assessment work with BLM on or before October 22, 1979. The implementing regulation, 43 CFR 3833.2-1(a), provides:

> (a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The claims in issue were located prior to 1976. Appellant filed with BLM the required information and notices of location on September 7, 1979. Appellant had until October 22, 1979, to file the evidence of annual assessment work for the 1978-1979 assessment year. According to BLM -- and appellant does not dispute this -- appellant failed to file a 1979 affidavit of assessment work or a notice of intention to hold the subject mining claims by October 22, 1979.

Failure so to file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. James V. Brady, 51 IBLA 361 (1980); Stanley Bishop, 50 IBLA 371 (1980); Donald D. Vesely, 50 IBLA 277 (1980); Kenneth K. Parker, 48 IBLA 129 (1980). In Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), appeal filed, Civ. No. 79-2255 (10th Cir. Nov. 21, 1979), the court sustained the statutory recordation requirement and its implementing regulations against constitutional challenges. We therefore find the claims abandoned and void.

We can understand the hardship of the result. Nevertheless, there is no provision in the statute authorizing the Department to waive compliance and accept late filings or to reinstate claims which were not timely filed. Cleo May Fresh, 50 IBLA 363 (1980); Janice Fay Ondreako, 53 IBLA 128 (1981).

[2] As to the argument that a BLM employee misled appellant as to whether the statement of assessment work should be filed, the Board has repeatedly held that the public may not rely on erroneous information given out by an employee of the Department. Reliance on erroneous information provided by a BLM employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute or regulation, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements. John Plutt, Jr., 53 IBLA 313 (1981), and cases cited therein.

E. Joe Swisher, 44 IBLA 44 (1979), cited by appellant as grounds to vacate BLM's decision, involved the question whether a mining claimant had enclosed required 1978 proofs of labor in a mailed article timely received by BLM. On the particular facts of the Swisher case, the Board concluded such proofs were enclosed in the mailed article, which was timely received by BLM. There is no allegation in the instant case that appellant timely mailed the evidence of assessment work. Accordingly, we find the Swisher case inapposite.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

APPENDIX

Serial Number	Claim Name	Posting Date
AA-29238	Fox	Before October 1951
AA-29239	No 1 Quartz Gulch	Before October 1951
AA-29240	Lograde	Before October 1951
AA-29241	Comet	Before October 1951
AA-29242	No 1 Snow Gulch	Before October 1951
AA-29243	No 2 Snow Gulch	Before October 1951
AA-29244	Douglas	July 1, 1969
AA-29245	Linda	July 1, 1969
AA-29246	Jeanne	July 1, 1969
AA-29247	Buckshot	July 1, 1969
AA-29248	Tommy	July 1, 1969
AA-29249	Helen	July 1, 1951
AA-29250	William	July 1, 1951
AA-29251	Spencer	July 1, 1951
AA-29252	Powerhouse	July 1, 1969

CHIEF ADMINISTRATIVE JUDGE PARRETTE CONCURRING:

Although appellant is to be commended for the painstaking effort that went into its very articulate and cogent statement of reasons, the opening sentence of that statement (dealing with "Legal Merits") implies a clear perception of the import of the statute in question. 1/ The problem is indeed as appellant seems to recognize; namely, that despite the merits of the individual case, the Board's hands are tied with respect to the relief being sought.

To better enable appellant to understand the legal ramifications of the situation, it may be helpful to quote from a decision by Judge Stuebing in a recent similar case, Lynn Keith, 53 IBLA 192, I.D. (1981):

> Lynn Keith has appealed * * * from BLM's finding that the claims must be deemed abandoned and void. Appellant does not deny that no affidavits of the performance of assessment work or notices of intention to hold these claims were filed. Instead, appellant contends that the regulations are arbitrary, capricious, unconstitutional, inequitable, unreasonable, preemptive, and subject to continuously revised interpretations which are applied retroactively. Appellant also argues that the regulations are not being used by BLM for the purpose intended by the statute, but to burden claimants with unnecessary obligations. Moreover, appellant says, BLM failed to adequately inform the public of the new requirements in that the notices distributed by BLM provided incomplete information. As an example, appellant has submitted an information "flyer" or "broadside" which BLM prepared and distributed to explain where, when, and how location certificates must be recorded. This publication makes no reference to the need to file evidence of assessment work or notices of intention to hold claims.
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> Although appellant's arguments in support of these various contentions are well presented and clearly understood, they do not establish a basis for reversal of BLM's decision.

1/ Appellant's opening sentence in the section on Legal Merits is as follows:

"The language of section 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c), squarely places upon the miner an extraordinary risk of claim forfeiture for a small misstep in any state: 'The failure to file such instruments * * * shall be deemed conclusively to constitute an abandonment of the mining claim * * *.'"

Appellant's further argument that "[i]n the state of Alaska the risk is greater than elsewhere" does not, unfortunately, give the Board a basis for overturning the explicit requirements of the statute.

[1] Under section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim, or evidence of the performance of annual assessment work on the claim, in the proper BLM office on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory, not discretionary, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner, and renders the claim void. James V. Brady, 51 IBLA 361 (1980).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

[3] Appellant also argues that the intention not to abandon these claims was apparent, saying, in essence, that the act of filing the certificates of location for record in BLM and the payment of recording fees on the last day on which notices of intention to hold, or evidence of assessment work could be submitted, clearly indicated that the claims were not abandoned. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered.

[4] Appellant's challenge of the statute and regulations cannot be sustained here. Essentially, the regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld.

See Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979) (appeal pending); Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, supra. In any event, it has frequently been held that an appeals board of this Department has no authority to declare a duly promulgated regulation invalid. Exxon Co., U.S.A., 45 IBLA 313 (1980); cf. Garland Coal and Mining Co., 52 IBLA 60 (1981). Nor may such a regulation be waived by the Department. Marvin E. Brown, 52 IBLA 44 (1981), and cases therein cited. With reference to the statute, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Alex Pinkham, 52 IBLA 149 (1981), and cases therein cited. Jurisdiction of such an issue is reserved exclusively to the judicial branch.

[5] Appellant asserts that the failure to file the required documents is attributable to inadequate and incomplete information supplied in BLM publications and orally by BLM personnel. However, all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edward W. Kramer, 51 IBLA 294 (1980). Therefore, reliance upon erroneous or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978). In the absence of a showing of affirmative misconduct by a responsible Federal employee, an estoppel will not lie against the Government because of reliance on erroneous or inadequate information given. United States v. Ruby Co., 588 F.2d 697 (9th Cir. 1978).

There is no member of this Board with soul so dead as to be unaware of the tragic and often devastating consequences of its action in affirming BLM State Office decisions in cases like these. But unless the statute is changed by the Congress, we have no choice in the matter.

Bernard V. Parrette
Chief Administrative Judge